

The new Australian Consumer Law - the effect on contracts

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*What would
you like to grow?*

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Introduction

In two previous issues of *Legal Talk Alerts*, the changes and impacts of the new Australian Consumer Law (ACL) were highlighted.

The most recent change to have occurred was on 1 January 2011 with the introduction of the *Competition and Consumer Act 2010* (CCA), which replaced the *Trade Practices Act 1974 (Cth)* (TPA) and introduced the remaining provisions of the ACL.

The aim of the ACL is to introduce consistent national consumer protection and fair trading laws, which replaces a wide range of national, State and Territory laws.

In particular, the regime expands unfair practice provisions, provides for a new national product safety regime and new laws on consumer guarantees.

What does this mean for you?

New standards

The streamlined ACL, requires all Australian and foreign businesses operating in Australia to understand and implement the new standards where necessary.

For example, as was highlighted in an earlier *Legal Talk Alert*, businesses should review their standard form contracts as the onus rests with the business to justify all of the terms and to ensure that their contracts do not contain any unfair terms.

(Refer to *LegalTalk Alert* 20 April 2010 and *LegalTalk Alert* 16 June 2010 for further information).

Changes that occurred on 1 January 2011 include amendments and additions to provisions relating to:

- unconscionable conduct
- misleading or deceptive conduct
- unfair practices
- unsolicited supplies and other forms of unfair practices
- consumer guarantees, and
- safety standards.

Name and section changes

In addition to altering the law, the introduction of the CCA also creates legal complications. For instance, some sections from the TPA have changed. An example can be seen with section 52 of the TPA (misleading and deceptive conduct), which is now section 18 of the ACL (i.e. Schedule 2 of the CCA).

Therefore, due to the wide-reaching nature of the former TPA (and its frequent reference in legal documents), many contracts will require amendment.

Where to now?

If businesses have not already done so, reviews should be undertaken to ensure that contracts comply with the new CCA. In addition, any documentation referring to the TPA will need to be amended to reflect the new law.

Further information

For further information, please contact your usual PwC adviser or:

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